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CHARLES ELMORE CRO
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

WALTER A. LAVENDER, Administrator of the Estate of Charles Lee Hunter, Deceased,
Petitioner,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, a Corporation,
Respondent.

No. 160

PETITION FOR A REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

and

SUGGESTIONS IN SUPPORT THEREOF.

N. MURRY EDWARDS,
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PETITION FOR A REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI
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SUGGESTIONS IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now Walter A. Lavender, Administrator of the estate of Charles Lee Hunter, deceased, and respectfully petitions and moves this Honorable Court to set aside the

order of this Court rendered and entered on October 10, 1949 in the above entitled cause denying this petitioner's Application for a Writ of Certiorari to the Supreme Court of Missouri and to grant petitioner a rehearing and reconsideration of this cause, and for grounds of this petition and motion petitioner states as follows:

(a) Since the filing of the petition herein, intervening circumstances of substantial and controlling effect have occurred, such as the sudden and untimely death of two of the Honorable Justices and the untimely injury incapacitating another of the Justices of this Court and the failure of the newly appointed Justices to take the oath of office in time to consider and pass on petitioner's petition.

(b) A substantial ground available to petitioner which has not previously been presented is that the judgment and decision of the Missouri Supreme Court sought to be reviewed is one in which that Court decided a Federal question of substance not theretofore determined by this Court, to-wit: That a railroad employer under the Federal Employers' Liability Act was not liable for the death of one of its dining car employees shot and killed while working within the scope of employment and in the line of duty under the Act where the shooting was caused by the admitted negligence of the other dining car employees in the negligent handling of a pistol while working in the dining car in the line of their duty and within the scope of their employment.

(c) The granting of the petition herein is vital because the question involved here to be decided finally by this Court materially affects a large class of employees who are injured or killed through the negligence of fellow employees by the discharge of firearms, while working in interstate commerce. This court has never passed upon this question heretofore.

The Supreme Court of Missouri has decided a Federal question of substance available to petitioner although not previously presented to this Court. The problem here is one which clearly calls for an exercise of this Court's jurisdiction under present amended Rule 33.

Respectfully submitted,

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N. MURRY EDWARDS,
302 Title Guaranty Building,
St. Louis 1, Missouri,
Attorney for Petitioner.

SUGGESTIONS IN SUPPORT OF PETITION FOR REHEARING.

(a) The petition herein was filed in this Court on July 2, 1949. Since the filing of the petition two of the Honorable Justices of this Court have passed away and another Honorable Justice of this Court has suffered an injury incapacitating him for the time being. One of the newly appointed Justices at the time of the ruling upon petitioner's petition had not taken the oath of office. Petitioner did not therefore have the benefit of having his petition passed upon by the full Court. The minority of this Court should not overrule the majority by reason of death or disability and without giving the newly appointed Justices an opportunity to pass upon the questions at issue. The principles laid down in the cases of Urie v. Thompson, 69 S. Ct. 1018; Wilkerson v. McCarthy, 60 S. Ct. 413; Lillie v. Thompson, 332 U. S. 459, 68 S. Ct. 140; Lavender v. Kurn, 327 U. S. 645, 66 Sup. Ct. 740; Anderson v. Atchison T. & S. F Ry. Co., 68 S. Ct. 854 and Tennant v. Peoria & P. U. Ry. Co., 321 U. S. 29, should not be overruled or changed by a minority of the Court.

(b) and (c) The question raised by petitioner's petition herein is one which has never been presented to this Court before, that is, shall there be a recovery under the Federal Employers Liability Act to injured employees and dependents of deceased employees of interstate commerce for injuries or death while working in the scope of their employment and in their line of duty by the negligent discharge of firearms of other employees who are also working in the line of duty and within the scope of employment. This case cleary affects the claims of a large class of injured interstate employees and dependents of deceased employees, injured or killed while working in interstate commerce. The State court's ruling that there can be no re-

covery in such a class of cases is an erroneous interpretation of the Federal Employers Liability Act. The Honorable Chief Justice of this Court on September 7, 1949 before the American Bar Association in St. Louis, Missouri, stated:

> "Those of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are, in a sense, prosecuting or defending class actions; that you represent not only your clients, but tremendously important principles, upon which are based the plans, hopes, and aspirations of a great many people throughout the country. Lawyers might be well-advised, in preparing petitions for certiorari, to spend a little less time discussing the merits of their cases and a little more time demonstrating why it is important that the Court should hear them. By that I do not mean that the petition should paraphrase the standards set out in Rule 38 of the Supreme Court Rules, as so many petitions do now. What the Court is interested in is the actual, practical effect of the disputed decision—its consequences for other litigants and in other situations. A petition for certiorari should explain why it is vital that the question involved be decided finally by the Supreme Court."

Petitioner's case falls within the class of cases above described and this Court, as it did in the late case of Urie v. Thompson, supra, should grant petitioner a rehearing and pass upon the questions raised by the petition filed herein as to this class of claims.

Respectfully submitted,

N. MURRY EDWARDS,
302 Title Guaranty Building,
St. Louis 1, Missouri,
Attorney for Petitioner.

Certificate of Counsel in Support of Petition for Rehearing.

I, N. Murry Edwards, Counsel for Petitioner herein do hereby certify that this petition for rehearing is presented in good faith and not for delay and that the petition herein is restricted to the grounds specified in paragraph 2 under Rule 33 of the Rules of this Court, amended and adopted on October 13, 1947.

.....

N. Murry Edwards,
302 Title Guaranty Building,
St. Louis 1, Missouri,
Attorney for Petitioner.